

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)**

MEDICAL SUPPLY DISTRIBUTION, LLC)	CASE NO. 2:21-CV-00161
)	
)	JUDGE WATSON
Plaintiff,)	
)	MAGISTRATE JUDGE VASCURA
vs.)	
)	
CHEM & CONSULT, INC.)	
Defendant.)	

**PLAINTIFF MEDICAL SUPPLY DISTRIBUTION, LLC’S
MOTION TO MODIFY THE PRELIMINARY PRETRIAL ORDER**

Pursuant to Fed. R. Civ. P. 6(b)(1)(A) and Local Rule 16.2, Plaintiff Medical Supply Distribution, LLC (“Medical Supply”) respectfully moves the Court to modify the Preliminary Pretrial Order (ECF No. 39) and extend the deadlines falling on and after December 22, 2021 by sixty (60) days from the date Medical Supply’s Motion for Leave to File, *Instantly*, Amended Complaint (ECF No. 49) (“Motion for Leave”) is decided. Fed. R. Civ. P. 6(b)(1)(A) and Local Rule 16.2 provide that the Court may extend time for good cause shown. Modification of the Preliminary Pretrial Order is fully warranted because the parties’ case strategy and expenditure of resources is dependent on the Court’s decision on the Motion for Leave, and the modification is being requested timely, in good faith, is not futile, and is without prejudice to Mitch Goodman and Defendant Chem & Consult, Inc. In fact, granting the Motion will, at the very least, postpone significant expense.

Pursuant to Local Rule 7.3(a), Medical Supply requested Defendant Chem & Consult, Inc.’s consent to file Motion to Modify the Preliminary Pretrial Order, but Defendant Chem & Consult, Inc. did not provide its consent. Accordingly, Medical Supply respectfully requests that the Court extend the deadlines falling on and after December 22, 2021 by sixty (60) days from

the date Medical Supply's Motion for Leave is decided. The supporting reasons for this motion are more fully set forth in the attached Memorandum in Support.

Dated: December 16, 2021

Respectfully submitted,

s/ Marc S. Blubaugh

MARC S. BLUBAUGH (0068221) (Trial Attorney)

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MEMORANDUM IN SUPPORT

In the interest of judicial efficiency, Medical Supply hereby incorporates by reference the factual background, procedural background, and additional facts uncovered in discovery as detailed in Medical Supply's Motion for Leave to File, *Instantly*, Amended Complaint (ECF No. 49) ("Motion for Leave") at Section I. Based on the newly discovered facts, on December 6, 2021, Medical Supply timely filed its Motion for Leave to add Mitch Goodman as an additional party defendant and to assert an additional claim against Mitch Goodman and Defendant Chem & Consult, Inc. ("Defendant Chem & Consult").

Still, prior to Medical Supply's discovery of the newly discovered facts, the parties agreed to certain deadlines as reflected in the Preliminary Pretrial Order (ECF No. 39). For example, the parties agreed to produce primary expert reports by December 21, 2021, rebuttal expert reports by January 21, 2022, and to complete discovery by February 21, 2022.

While Medical Supply has diligently prosecuted its case and conducted discovery over the course of several months, if the Court allows Medical Supply to add Mitch Goodman as a party defendant and permits Medical Supply's additional claim to be asserted, Medical Supply will need to produce expert reports that will not be necessary if Medical Supply's Motion for Leave is denied. In turn, Defendant Chem & Consult will likewise not need to incur expert-associated expenses for the time being. Additionally, Medical Supply will need to conduct further discovery to prosecute its case against both Mitch Goodman and Defendant Chem & Consult. In sum, the parties' case strategy and expenditure of resources is dependent on the Court's decision on Medical Supply's Motion for Leave.

Because Medical Supply's Motion for Leave will not be ripe for a decision until, at the earliest, January 10, 2022, after the expert report deadline, Medical Supply states that good cause exists to extend the deadlines falling on and after December 22, 2021 by sixty (60) days from the date Medical Supply's Motion for Leave is decided. Medical Supply's request is being requested timely, in good faith, is not futile, and is without prejudice to Defendant Chem & Consult, Inc. Presumably, if Medical Supply's Motion for Leave is granted, the extension of time will also benefit Mitch Goodman and Defendant Chem & Consult to allow for additional time to prepare their defense. Therefore, Medical Supply respectfully requests that the Court grant Medical Supply's Motion to Modify the Preliminary Pretrial Order.

Dated: December 16, 2021

Respectfully submitted,

s/ Marc S. Blubaugh

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CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of December, 2021, a copy of the foregoing document was electronically filed with the Court's electronic filing system, which will provide notice of the same to all parties indicated on the electronic filing receipt.

s/ Marc S. Blubaugh

Marc S. Blubaugh (0068221)

*Attorney for Plaintiff Medical Supply Distribution,
LLC*